Supreme Court, U. S.
FILED
OCT 12 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978
No. 78-357

==========

ROBERT R. WILLIAMS, et al.,

Appellants,

v.

LEILA G. BROWN,

Appellees.

==========

On Appeal From The United States Court
Of Appeals For The Fifth Circuit

==========

MOTION TO AFFIRM

==========

J.U.. BLACKSHER
LARRY MENEFEE
1407 Davis Avenue
Mobile, Alabama 36603

EDWARD STILL
601 Title Building
Birmingham, Alabama 35203

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York 10019

Counsel for Appellees

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978
No. 78-357

==========

ROBERT R. WILLIAMS, et al.,

Appellants,

v.

LEILA G. BROWN,

Appellees.

==========

On Appeal From The United States Court
Of Appeals For The Fifth Circuit

==========

MOTION TO AFFIRM

==========

Questions Presented

1. Were the concurrent factual findings of the courts below, that the school board at-large election plan was adopted and maintained for the purpose of discriminating against black voters, clearly erroneous?

2. Should the decision of the court of appeals be affirmed on the alternative ground that the school board's at-large election plan

had the effect of disenfranchising black voters in violation of White v. Regester, 412 U.S. 755 (1973)?

3. Did the district court err in denying the school board's request that full implementation of injunctive relief be delayed for 4 years?

ARGUMENT

1. Notwithstanding appellants' exclusive discussion of the meaning and application of the dilution rule of White v. Regester, 412 U.S. 755 (1973), the district court decision includes a finding of fact that the method of electing the Mobile school commissioners is motivated by an unconstitutional desire to discriminate against blacks. J.S. 37b. This aspect of the case, which provides a sufficient and independent basis for the relief awarded, presents an application of Gomillion v. Lightfoot, 364 U.S. 339 (1960) and Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

The district court made a finding of discriminatory intent after careful analysis of the evidence presented at a six day trial, and the court of appeals upheld the lower court findings as not clearly erroneous. J.S. 2a. This Court does not ordinarily "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." Garver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949).

The record contains ample evidence to support the district court finding of discriminatory intent. The district court found that preventing the election of blacks is a matter of paramount importance when the Alabama legislature considers districting legislation. J.S. 35b-36b. As a practical matter legislation affecting Mobile elections is controlled by state legislators from Mobile, J.S. 35b, who in turn are particularly responsive to local elected officials. The district court concluded that the board had acted in a dilatory and bad faith manner in trying to obstruct the instant litigation,[1/] and had a long history of intransigent racially discrimina-

---

1/ J.S. 22b-26b, this finding was based on two incidents. Shortly after the action was first filed in June 1975, the legislature passed a local act reapportioning the board into five single-member districts and the defendant commissioners claimed they supported that redistricting. The district court therefore dismissed the case. Immediately after that dismissal, however, the commissioners filed suit in state court attacking the validity of the redistricting statute as violative of the state constitution. After the redistricting statute was held invalid by the state courts, the district court in March 1976 granted leave to rejoin the commissioners as defendants.

tory policies in the operation of the Mobile schools. J.S. 13b-18b, 26b, 43b.[2/] Appellants do not question any of these subsidiary findings of fact, or the district court's finding of "a present purpose to dilute the black vote." J.S. 37b.

2. Whether the discriminatory effect of the school board's at-large elections was sufficient by itself to warrant relief under White v. Regester is only an alternative ground for affirming the decision below. The district court concluded that the at-large plan had such an

---

1/ Cont'd.

In September 1976 the defendants sought without success to stay further proceedings on the ground that the commissioners were supporting new legislation which would have provided single member district elections for the Mobile school board. At trial, however, counsel for the commissioners admitted that the proposed 1976 bill, which had not been adopted, would also have violated the Alabama Constitution. J.S. 24b-26b.

2/ The district court found that the 13 year history of school desegregation litigation against the Mobile board was "replete with dilatory actions by the Board attempting to forestall implementation of a desegregated school system" and contained "devastating evidence of the complete unresponsiveness and resistance on the part of the Board to the particularized needs and aspirations of the black community". J.S. 14b.

unconstitutional impact. But it is not the practice of this Court to grant plenary review to decide the correctness of independent alternative grounds available to support otherwise proper decisions.

Most of the questions presented by appellants concern the correctness of factual findings made by the district court or the weight and sufficiency of those findings. J.S. 4-5. The district court carefully analyzed in a lengthy opinion the extensive record in this case. Each of the trial court findings was held to be not clearly erroneous by the court of appeals, and such concurrent lower court findings are not ordinarily reviewed by this Court. The record, moreover, fully supports these findings. The evidence showed that no black had ever won an election in a majority white district in Mobile, that voting patterns were so racially polarized that whites did not and would not in the foreseeable future vote for black candidates,[3/] and that white politicians manipulate candidacies to capitalize on these racial voting patterns.[4/]

3/ J.S. 10b-13b.

4/ J.S. 12b.

3. The Mobile school commissioners serve staggered six year terms; one member's term is scheduled to expire in 1978, two in 1980, and two in 1982. Although this case was filed in 1975, and despite plaintiffs' diligent efforts to obtain a decision prior to November 1976 elections, the merits were not decided by the district court until December, 1976 because of the dilatory school board tactics described in the court's opinion. J.S. 22b-26b. Under these circumstances the district court clearly had the authority to order that new elections be held in 1978 for all five commission seats[5/], the remedy which appellees sought.

Instead of directing 1978 elections in all five seats, and thus ending the terms of 4 commissioners who would ordinarily have served until 1980 and 1982, the district court ordered a far less drastic remedy. The court required merely that two commissioners be chosen in 1978 from single member districts. Since only one term was scheduled to expire in 1978, the court directed

---

5/ Sims v. Amos, 336 F.Supp. 924 (M.D. Ala. 1972); Swann v. Adams, 383 U.S. 210 (1966).

that another vacancy be created by the selection of one of the remaining four commissioners to serve as a non-voting president of the Commission. This remedial order was well within the discretion of the district court.

Appellants also complain that, because Commissioner Alexander's term expires in 1980 and there will not be an election in the district where he resides until 1982, he will lose his "right to run again as an incumbent", J.S. 23. No such right has heretofore been recognized by any court. Moreover, in this case it was impossible to assure every commissioner an opportunity to run as an incumbent, since 3 of the commissioners reside in district two, one of those terms expiries in 1980 and two of those terms end in 1982. If the district court had ordered the district two elections in 1980, thus enabling commissioner Alexander to run as an incumbent, commissioners Bosarge and Berger would have been unable to "run as incumbents" in 1982. The district court was under no obligation to adjust its order to suit the political convenience of a particular commissioner.

CONCLUSION

For the above reasons the judgment of the court of appeals should be affirmed.

J.U. BLACKSHER
LARRY MENEFEE
1407 Davis Avenue
Mobile, Alabama 36603

EDWARD STILL
601 Title Building
Birmingham, Alabama 35203

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York 10019

Counsel for Appellees